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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1964

No. 1131

CAPITOL AIRWAYS, INC.,
Petitioner,

vs.

THE AIRLINE PILOTS ASSOCIATION INTERNATIONAL,
Respondent.

BRIEF OF CAPITOL AIRWAYS, INC. IN OPPOSITION TO THE CROSS-PETITION FOR THE WRIT OF CERTIORARI

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May It Please the Court:

Capitol Airways, Inc. has heretofore filed a Petition for the Writ of Certiorari in No. 1031 and the respondent has filed a Cross-Petition for Certiorari dealing only with the claim of a former employee known as Riley.

In conformity with Rule 40(3) of this Court and in reference to the Cross-Petition for Writ of Certiorari, Capitol Airways, Inc. would respectfully show:

OPINION BELOW

While the Cross-Petition for Certiorari includes in its Appendix a copy of the Opinion of the Court of Appeals, it did not include the Opinion of the District Court which is really the only opinion which discusses the merits of the claim involved.

Accordingly, and for the convenience of the Court, Capitol Airways, Inc. includes herein the entire Opinion of the District Court insofar as it deals with the claim involving Mr. Riley.

RILEY AWARD

This award presents the question of whether or not the Board could order payment of four months' pay (or not less than $4800) without reinstatement, under these circumstances: Riley, among others, had worked for Aaxico. When Aaxico lost its government "Logair" contract to Capitol, Capitol agreed to hire the Aaxico pilots. An agreement was entered into which on its face purports to employ this group of pilots without reservation. However, according to an affidavit of Mr. Mack Rowe, a company official, it had been distinctly understood that Capitol would not continue to employ these pilots after the expiration of the then current government contract unless it was awarded a new Logair contract then being negotiated.[1]

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1. Counsel for defendant raises the question of whether the Court can consider the affidavit of Mr. Rowe since it is in relation to the written contract of employment between Capitol and ALPA, and is thus "parol evidence". The contract, it is urged, shows on its face that Riley was included in the collective bargaining agreement, and this cannot be impeached by the affidavit. The Court does not consider this evidence inadmissible. This is in effect, if not in precise form, the situation presented in an example given by Professor Corbin:

Capitol did not get the contract and the Aaxico pilots were furloughed. However, Aaxico did get the contract and rather than rehire its old pilots, contracted with IASCO (a company organized to provide airline crews under contract) to fill its requirements for pilots. Riley and the other Aaxico pilots filed suit on August 24, 1961 in the Federal District Court at San Antonio, Texas, asking for injunctive relief against Aaxico based on Aaxico's refusal to rehire them. In this suit the pilots were successful. These facts are admitted by the defendant.

On October 13, 1961, while Riley was flying for Riddle Airlines in Oklahoma, Capitol sent the following form letter to him:

> "Dear Mr. Riley: Please advise immediately if you will accept recall as co-pilot at San Antonio or Tinker. Duration is unknown at present and we will not grant leave of absence in lieu of recall."

Following receipt of this letter Riley left Riddle Airlines and returned to San Antonio. Mr. Rowe states that this was a form letter sent out to ascertain availability of pilots, and that it was sent to many more pilots than would have ultimately been needed. This is also not denied.

There are three "contracts" involved here: the Aaxico contract, the Capitol contract with the Aaxico pilots, and the letter of October 13, 1961, to Riley. It was apparently

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"A writes out the terms of an agreement, signs it, and delivers it to B . . . saying . . . that he offers it for immediate acceptance, but that the promises contained therein are to be enforceable as a contract only in case event X happens. B accepts A's offer and signs the document. Here also it is almost universally held that B can enforce the contract against A only on condition that event X happens. In this case there is a valid contract, but the promises of one or both parties therein are subject to an extrinsic condition precedent which must be proved and is permitted to be proved by parol evidence." 3 *Corbin on Contracts*, Section 577 (5), page 392.

neither the theory of the defendant, Airline Pilots Association, (herein referred to as ALPA), nor Riley, nor the view of the Board, that this grievance was a result of the general employment contract between Capitol and the Aaxico group.[2] Based upon the evidence presented in the affidavit of Mr. Rowe, which is not denied by the defendant, the Court finds that Riley was not covered by the collective bargaining agreement after expiration of Capitol's Logair contract and its resumption by Aaxico.

The Board found in effect that the letter of October 13, 1961, was an offer of employment, that Riley accepted the offer, and that the acceptance constituted a contract which Capitol breached and for which damages were awarded. Since Riley was not then covered by the collective bargaining agreement, the question arises whether the Board had authority to determine the effect and validity of an alleged contract of employment—an individual contract between the employee and the company, and one outside the collective bargaining agreement. The answer must be in the negative.

The agreement to arbitrate states in paragraph (b):

> "[T]here is hereby established a System Board of Adjustment for the purpose of adjusting and deciding disputes which may arise under the terms of the Pilots' Agreement."

and in paragraph (e):

> "The Board shall have jurisdiction over disputes between any employee covered by the Pilots' Agreement and the Company, growing out of grievances or out of interpretation or application of any of the terms of the Pilots' Agreement."

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2. As stated by the Board in its award, "It is evident that had the letter of October 13, 1961 never had [sic] been send [sic] out these two cases would not now be pending before this board."

The rule which limits the authority of the Board is found in a case cited by defendant—one of the "triumvirate" of Supreme Court opinions, to use defendant's term:

> "[A]n arbitrator is confined to interpretation and application of the collective bargaining agreement; he does not sit to dispense his own brand of industrial justice. He may of course look for guidance from many sources, yet his award is legitimate only so long as it draws its essence from the collective bargaining agreement. When the arbitrators' words manifest an infidelity to this obligation, courts have no choice but to refuse enforcement of the award." *United Steelworkers of America* v. *Enterprise Wheel and Car Corp.*, 363 U.S. 593, 597 (1960).

Clearly the dispute as to whether the company offered employment to Riley in its letter of October 13, 1961, is outside the scope of the collective bargaining agreement. As such it is an issue or dispute which the company did not agree to submit to arbitration and for that reason the award is invalid.

ARGUMENT

The Opinion of the District Court and the Court of Appeals in the Riley case are clearly correct and to permit an arbitrator to fix the bounds of his jurisdiction and make a money award without full judicial review would clearly be violative of due process and would also fly in the teeth of clear congressional intent as expressed in Section 153 (p) Title 45 USC.

The Cross-Petition should be denied.

Respectfully submitted,

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